

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 92-0935 CS

Controlled Substance Excise Tax

For Tax Period: September 9, 1992

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested on September 9, 1992, for cultivation of marijuana. The Department assessed the controlled substance excise tax based on the weight of 8,960.00 grams of marijuana. The taxpayer protested the assessment. Additional relevant information will be provided below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or

(3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

(1) the weight of the controlled substance. . ."

Taxpayer was arrested and the controlled substance excise tax was assessed based on 8,960.00 grams of marijuana.

Pursuant to IC 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer argued the marijuana plants were found on property not owned by the taxpayer. Taxpayer argued he did not have possession of the marijuana which was the basis of the assessment. Pursuant to an affidavit for probable cause filed by a trooper with the Indiana State Police, the marijuana plants were found growing at a residence one-half mile north of State Road 160. A more specific description of the location was included. The affidavit also stated the taxpayer was met as he exited the woods in the area of the marijuana. Taxpayer submitted his address in Salem, Indiana at the time of the arrest as evidence the marijuana was not found on his property.

This hearing officer is not familiar enough with the area to determine whether the marijuana was found on the taxpayer's property with the information provided. Law enforcement from the area made the arrest and filed criminal charges which were later dismissed because the taxpayer completed a treatment program.

Taxpayer has provided no evidence to support his argument or sustain his protest of the controlled substance excise tax.

FINDING

Taxpayers' protest is denied.